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10/790,558	03/01/2004	Victor M. Marinelli	MARV14A	9727

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EXAMINER
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VANTERPOOL, LESTER L

ART UNIT	PAPER NUMBER
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3727

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/790,558	Applicant(s) MARINELLI, VICTOR M.	
	Examiner Lester L. Vanterpool	Art Unit 3727	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>March 1, 2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Pursley et al., (U.S. Patent Number 6557739). Pursley et al., '739 discloses the attaching portion (1) (See Figure 1); and the holding portion (3) (See Figure 1); wherein the attaching portion (1) is to replaceably attach to the leg of the user; wherein the holding portion (3) extends from the attaching portion (1) (See Figure 1); and wherein the holding portion (3) is to replaceably hold the hammer in the position which provides complete freedom of movement of hands and feet of the user and which permits the user to remove the hammer with the same hand employed to use the hammer (See Figure 1).

Regarding claim 2, Pursley et al., '739 further discloses the attaching portion (1) comprises the pair of extension members (6a & 6b) (See Figure 1).

Regarding claim 3, Pursley et al., '739 further discloses the pair of extension members (6a & 6b) of the attaching portion (1) are mirror images of each other (See

Figure 1); wherein the pair of extension members (6a & 6b) of the attaching portion (1) are vertically-oriented (See Figure 1); wherein the pair of extension members (6a & 6b) of the attaching portion (1) are spaced-apart from each other (See Figure 1); wherein the pair of extension members (6a & 6b) of the attaching portion (1) lie in the same plane (See Figure 1); wherein each extension member (6a & 6b) of the pair of extension member (6a & 6b) of the attaching portion (1) is rod-like (See Column 2, lines 66 – 67) (See Figure 1); wherein each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) is slender (See Figure 1); and wherein each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) is elongated (See Figure 1).

Regarding claim 4, Pursley et al., '739 further discloses each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) has the lowermost end (7a & 7b); wherein each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) has the uppermost end (See Figure 1); wherein each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) has the upper portion; wherein each extension member of the pair of extension members of the attaching portion (1) has the intermediate portion; and wherein each extension member of the pair of extension members of the attaching portion (1) has the lower portion (7a & 7b).

Regarding claim 5, Pursley et al., '739 further discloses the upper portion (See Figure 1) of each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) depends from the uppermost end (See Figure 1) of an associated extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) to the first transition point (18a & 18b).

Regarding claim 6, Pursley et al., further discloses the said upper portion (See Figure 1) of each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) is straight; and wherein said upper portion of each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) is parallel to the other (See Figure 1).

Regarding claim 7, Pursley et al., '739 further discloses the intermediate portion (See Figure 1) of each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) depends sidewardly outwardly from the first transition point (18a & 18b) of the upper portion (See Figure 1) of the associated extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) to the second transition point (See Figure 1).

Regarding claim 8, Pursley et al., '739 further discloses the intermediate portion (See Figure 1) of each extension member (6a & 6b) of the pair of extension members (See Figure 1) of the attaching portion (1) is continuous with the upper portion (See

Figure 1) of the associated extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) so as to allow the intermediate portion (See Figure 1) of each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) to be one-piece with the upper portion (See Figure 1) of the associated extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1).

Regarding claim 9, Pursley et al., '739 further discloses the intermediate portion (See Figure 1) of each extension member (6a & 6b) of the pair of extension member (6a & 6b) of the attaching portion (1) is straight (See Figure 1).

Regarding claim 10, Pursley et al., '739 further discloses the lower portion (7a & 7b) of each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) depends from the second transition point (See Figure 1) of the intermediate portion (See Figure 1) of the associated extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) to the lowermost end (7a & 7b) of the associated extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1).

Regarding claim 11, Pursley et al., '739 further discloses the lower portion (7a & 7b) of

each extension member (6a & 6b) of the pair of extension members (6a & 6b) of the attaching portion (1) is continuous with the intermediate portion of the associated extension member (6a & 6ab) of the pair of extension members (6a & 6b) of the attaching portion so as to allow the lower portion (7a & 7b) of each extension member of the pair of extension members (6a & 6b) of the attaching portion (1) to be one-piece with the intermediate portion (See Figure 1) of the associated extension member of the pair of extension members (6a & 6b) of the attaching portion (1) (See Figure 1).

Regarding claim 12, Pursley et al., '739 further discloses the lower portion (7a & 7b) of each the member of the pair of the members of the attaching portion (1) is straight (See Figure 1); wherein the lower portion (7a & 7b) of each extension member (See Figure 1) of the pair of extension members (6a & 6b) of the attaching portion (1) is parallel to the other (See Figure 1); wherein the lower portion (7a & 7b) of each extension member of the pair of extension members (6a & 6b) of the attaching portion (1) is outboard of the upper portion (See Figure 1) of the associated extension member of the pair of extension members (6a & 6b) of the attaching portion (1); and wherein the lower portion (7a & 7b) of each extension member of the pair of extension members (6a & 6b) of the attaching portion (1) is parallel to the upper portion (See Figure 1) of the associated extension member of said pair of extension members (6a & 6b) of the attaching portion (1).

3. Claims 1 – 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Pursley et al., (U.S. Patent Number 5605263).

Regarding claims 1 – 3, Pursley et al., '263 discloses the attaching portion (See Column 3, lines 53 – 57) (See Figures 3 & 8), the holding portion (See Column 3, lines 48 – 53) (See Figures 3 & 8), the pair of extension member (13) vertically-oriented, spaced-apart, in the same plane, are rod-like, slender and elongated (See Figures 3 & 5).

Regarding claim 4, Pursley et al., '263 further discloses the extension member of the pair of extension members (See Figures 1 –3 & 5) have the lowermost end, the uppermost end (See Figures 1, 3 & 5), the upper portion (12) (See Figures 1, 3 & 5), the intermediate portion (14) (See Figures 2, 3 & 5) and the lower portion (13) (See Figures 1, 3 & 5).

Regarding claims 5 & 6, Pursley et al., '263 further discloses the upper portion (12) (See Figures 1, 3 & 5) depends from the uppermost end of the associated extension member (See Figures 1, 3 & 5) of the pair of extension members of the attaching portion (See Figure 3) to the first transition point (See Figure 2 & 3). Moreover, the upper portion (12) is straight and parallel to the other (See Figures 1 & 3).

Regarding claim 7 – 9, Pursley et al., '263 further discloses the intermediate portion (14) (See Figures 2 & 3) depends sidewardly outwardly from the first transition point (See Figures 2 & 3) of the upper portion (12) to the second transition point (See



Figures 2 & 3). Moreover, the intermediate portion (14) is continuous with the upper portion (12) (See Figures 2 & 3) so as to allow the intermediate portion (14) to be one-piece with the upper portion (12) wherein, the intermediate portion is straight (See Figures 2, 3 & 5).

Regarding claims 10 – 12, Pursley et al., '263 further discloses the lower portion (13) (See Figures 1, 3 & 5) depends from the second transition point of the intermediate portion (14) to the lowermost end of the associated extension members of the pair of extension members of the attaching portion (See Figure 3). Moreover, the lower portion (13) is continuous with the intermediate portion (14) (See Figures 2 & 3) so as to allow the lower portion to be one-piece with the intermediate portion (14) (See Figures 2, 3 & 5), wherein the lower portion (13) is straight; parallel to the other, outboard of the upper the upper portion (12); and parallel to the upper portion (12) (See Figures 1, 3 & 5).

Regarding claim 13, Pursley et al., '263 discloses the each extension member (See Figures 1 – 3) of the pair of extension members (12) of the attaching portion (1) has the upper loop (57) (See Figure 5); and wherein each extension member of the pair of extension members of the attaching portion has the lower loop (56) (See Figure 5).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 15, 16, 18, 20, 21, 23, 24 – 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pursley et al., (U.S. Patent Number 5605263) in view of Gregg (U.S. Patent Number 6217072). Claim 15, Pursley et al., discloses the upper loop (57) is identical to the other (See Figure 5), vertically-oriented (See Figure 5); spaced-apart from the other (See Figure 5), parallel to the other (See Figure 5) and aligned with the other (See Figure 5).

Regarding claim 16, Pursley et al., discloses the upper loop (57) is formed by the upper member (See Figure 5); wherein the upper member of the upper loop (57) is

attached to the uppermost end of the associated extension member (22) of the pair of extension members (12) of the attaching portion (See Figure 5).

Regarding claim 18, Gregg discloses the upper member of the upper loop (118) is arcuate-shape (See Figure 7), vertically-oriented, spaced-apart from the other and is parallel to the other (See Figures 1 & 7) for the purpose of providing symmetry.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the upper loop (118) is arcuate-shape (See Figure 7), vertically-oriented, spaced-apart from the other and is parallel to the other as taught by Gregg with the holster of Pursley et al., in order to enhance symmetry and uniformity.

Regarding claim 20, Pursley et al., disclose the lower loop (56) is identical to the other (See Figure 5), vertically-oriented (See Figure 5); spaced-apart from the other (See Figure 5), parallel to the other (See Figure 5) and aligned with the other (See Figure 5).

Regarding claim 21, Pursley et al., discloses the lower loop (56) (See Figure 5) of each extension member of the pair of extension members (13) of the attaching portion is formed by the lower member (See Figure 5); and wherein the lower member is attached to the lowermost end of the associated extension member of the pair of extension members (13) of the attaching portion (See Figure 5).

Regarding claim 23, Gregg discloses the lower loop (118) (See Figure 7) is generally square-shaped; wherein the lower member of the lower loop (118) is straight, vertically-oriented, spaced-apart from the other, and parallel to the other (See Figure 7) for the purpose of providing durability.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the lower loop is generally square-shaped; wherein the lower member of the lower loop is straight, vertically-oriented, spaced-apart from the other, and parallel to the other as taught by Gregg with the holster of Pursley et al., in order to enhance durability.

Regarding claim 25, Pursley et al., discloses the attaching portion (See Figure 5) comprises the cross member (18) (See Figures 1 & 3); wherein the cross member (18) extends from the lower loop (56) of the extension member (13) (See Figure 5).

Regarding claim 26, Pursley et al., discloses the cross member (18) (See Figures 1 & 3) of the attaching portion is rod-like (See Figures 1 & 3), slender (See Figures 1 & 3); elongated; and arcs to conform to the leg of the user (See Figure 1 & 3).

Regarding claim 27, Pursley et al., discloses the holding portion (10) (See Figure 5) comprises the pair of segment members; and wherein the pair of segment members of the holding portion is to hold the head the hammer (See Column 3, lines 46 – 47).

Regarding claim 28, Pursley et al., discloses the segment member (See Figures 1, 3 & 5) are mirror images of each other; vertically-oriented; spaced-apart from each other; rod-like; slender and elongated (See Figures 1, 3 & 5).

Regarding claim 29, Pursley et al., discloses each segment member (See Figures 1, 3 & 5) of the pair of segment members of the holding portion (10) has the forwardmost end; the rear portion; lower portion; and the forward portion (See Figures 1, 3 & 5).

Regarding claim 30, Pursley et al., '263 discloses the rear portion of each segment member (See Figures 1, 3 & 5) of the pair of segment members of the holding portion (10). (See Figures 1, 3 & 5).

However, Pursley et al., does not disclose the rear portion depending forwardly from the lowermost end of the associated extension member of the pair of extension members of the attaching portion to the first transition point.

It would have been an obvious matter of design choice to make the rear portion depending forwardly from the lowermost end of the associated extension member of the pair of extension members of the attaching portion to the first transition point, since applicant has not disclosed that the rear portion depending forwardly from the lowermost end of the associated extension member of the pair of extension members of the attaching portion to the first transition point solves any stated problem or is for any

particular purposed and it appears that the invention would perform equally well with the rear portion of each segment member as taught by Pursley et al '263.

Regarding claim 31, Pursley et al., discloses the rear portion of each segment member (See Figures 1, 3 & 5) of the pair of segment members of the holding portion is straight (See Figures 1, 3 & 5); and parallel to the other (See Figures 1, 3 & 5).

Regarding claim 32, Pursley et al., '263 discloses the lower portion of each segment member of the pair of segment members of the holding member (10) (See Figures 1, 3, & 5) extends forwardly (See Figures 1, 3 & 5) and upwardly (See Figures 1, 3 & 5) from the first transition point (See Figures 1, 3 & 5) of the rear portion of the associated segment member of the pair of segment members of the holding portion (10) to the second transition point (See Figures 1, 3 & 5).

However, Pursley et al., does not disclose the holding portion extends inwardly. Pursley et al., '739, teaches the holding portion extends inwardly (See Column 2, lines 33 – 43).

It would have been an obvious to one ordinary skill in the art at the time the invention was made to make the holding portion extending inwardly inwardly as taught by Pursley et al., '739 with the holster of Pursley et al., '263 in order to enhance balancing tools in storage position.

Regarding claim 33, Pursley et al., further discloses the lower portion (See Figures 1, 3 & 5) of each segment member of the pair of segment members of the holding portion (10) is continuous (See Figures 1, 3 & 5) with the rear portion (See Figures 1, 3 & 5) of the associated segment member of the pair of segment members of the holding portion (10) so as to allow the lower portion of each segment member of the pair of segment members of the holding portion (10) to be one-piece (See Figures 1, 3 & 5) with the rear portion of the associated segment member of the pair of segment members of the holding portion (10) (See Figures 1, 3 & 5).

Regarding claim 34, Pursley et al., further discloses the lower portion of each segment members of the pair of segment members of the holding portion is straight (See Figures 1, 3 & 5); and wherein the lower portion of each segment member of the pair of segment members of the holding portion converges towards the other (See Figures 1, 3 & 5).

Regarding claim 35, Pursley et al., further discloses the forward portion (See Figures 1, 3 & 5) of each segment member of the pair of segment members of the holding portion (10) (See Figures 1, 3 & 5) extends upwardly from the second transition point of the lower portion of an associated segment member of the pair of segment members of the holding portion (10) to the forwardmost end of the associated segment member of the pair of segment members of the holding portion.

However, Pursley et al., does not disclose the holding portion extends inwardly.

Pursley et al., '739, teaches the holding portion extends inwardly (See Column 2, lines 33 – 43).

It would have been an obvious to one ordinary skill in the art at the time the invention was made to make the holding portion extending inwardly inwardly as taught by Pursley et al., '739 with the holster of Pursley et al., '263 in order to enhance balancing tools in storage position.

Regarding claim 36, Pursley et al., further discloses the forward portion (See Figures 1, 3 & 5) of each segment member of the pair of segment members of the holding portion (10) is continuous with the lower portion (See Figures 1, 3 & 5) of an associated segment member of the pair of segment members of the holding portion (10) so as to the forward portion of each segment member of the pair of segment members of the holding portion (10) to be one-piece (See Figures 1, 3 & 5) with said lower portion of the associated segment member of the pair of segment members of the holding portion (10) (See Figures 1, 3 & 5).

Regarding claim 37, Pursley et al., further discloses the forward portion (See Figures 1, 3 & 5) of each segment member of the pair of segment member of the holding portion (10) is straight (See Figures 1, 3 & 5); wherein the forward portion (See Figures 1, 3 & 5) of each segment member of the pair of segment members of the holding portion converges towards the other (See Figures 1, 3 & 5); wherein the forward portion of each segment member of the pair of segment members of the holding portion



(10) is inboard of the rear portion (See Figures 1, 3 & 5) of the associated segment member of the pair of segment members of the holding portion (See Figures 1, 3 & 5); and wherein the forward portion (See Figures 1, 3 & 5) of each segment member of the pair of segment members of the holding portion (10) lies in the general parallel plane to the rear portion of an associated segment member of the pair of segment members of the holding portion (10) (See Figures 1, 3 & 5).

Regarding claim 38, Pursley et al., further discloses the holding portion (10) (See Figures 1, 3 & 5) comprises the connecting member (See Figures 1, 3 & 5); wherein the connecting member (See Figure 3) of the holding portion (10) extends from the forwardmost end of one segment member of the pair of segment members of the holding portion (10) (See Figures 1, 3 & 5) to the forwardmost end of the other segment member of the pair of segment members of the holding portion (10) (See Figures 1, 3 & 5); and wherein the connecting member (See Figure 3) of the holding portion (10) extends forwardly from the forwardmost end of each segment member of the pair of segment members of the holding portion (10) (See Figures 1, 3 & 5).

Regarding claim 39, Pursley et al., further discloses the connecting member (See Figures 1, 3 & 5) of the holding portion (10) is continuous with the forward portion of each segment member of the pair of segment members of the holding portion (10) so as to allow the connecting member of the holding portion (10) to be one-piece (See Figures

1, 3 & 5) with the forward portion of the associated segment member of the pair of segment members of the holding portion (10) (See Figures 1, 3 & 5).

Regarding claim 40, Pursley et al., further discloses the connecting member (See Figures 1, 3 & 5) of the holding portion (10) is inverted o-shaped (See Figures 1, 3 & 5).

6. Claims 41 – 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pursley et al., (U.S. Patent Number 5605263) and Gregg (U.S. Patent Number 6217072) as applied to claim 38 above, and further in view of Pursley et al., (U.S. Patent Number 6557739) and Boydon (U.S. Patent Publication Number 2003 / 0042474 A1). Pursley et al., and Gregg discloses the invention substantially as claimed. Pursley et al., discloses the holding portion (10) (See Column 3, lines 46 – 47) (See Figures 1, 3 & 5); wherein the pair of segment members of the holding portion (10) and the connecting member (See Figures 1, 3 & 5) of the holding portion (10) form the cradle (See Column 3, lines 63 – 67) (See Figures 1, 3 & 5).

However, does not discloses the head of the hammer having the claw; wherein the head of the hammer has a bell/poll.

Boydon teaches the hammer (10) having the claw (40) (See Paragraphy 0028 & 0029) and the bell / poll (34) (See Paragraph 0025) (See Figures 1 & 3) for the purpose of providing multi-functional capabilities.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hammer have the claw and the bell / poll as taught by Boydon with the holder of Pursley et al., in order to enhance nesting.

However, Pursley et al., (5605263) does not disclose the cradle of the holding portion is to replaceably cradle the head of the hammer therein with the handle of the hammer extending upwardly therefrom, with the claw of the hammer extending replaceably through one segment member of the pair of segment members of the holding portion, and with the bell/poll of the hammer extending replaceably through the other segment member of the pair of segment members of the holding portion.

Pursley et al., (6557739) teaches the cradle (3) of the holding portion (See Figure 1) is to replaceably cradle (3) the head of the hammer therein with the handle of the hammer extending upwardly therefrom, with the claw of the hammer extending replaceably through one segment member of the pair of segment members (See Figure 1) of the holding portion (See Figure 1) and wherein the bell/poll of the hammer extending replaceably through the other segment member of the pair of segment members of the holding portion. (See Column 2, lines 32 – 47) for the purpose of providing ergonomic storage positioning.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cradle of the holding portion is to replaceably cradle the head of the hammer therein with the handle of the hammer extending upwardly therefrom, with the claw of the hammer extending replaceably through one segment member of the pair of segment members of the holding portion and wherein the bell/poll

of the hammer extending replaceably through the other segment member of the pair of segment members of the holding portion as taught by Pursley et al., '739 with the holster of Pursley et al., '263 in order to enhance ergonomic storage positioning.

Regarding claim 42, Pursley et al., discloses the holding portion (10) (See Figures 1, 3 & 5) comprises the cross member (See Figures 1, 3 & 5); and wherein the cross member (See Figure 1, 3 & 5) of the holding portion (10) extends horizontally (See Figures 1, 3, & 5) from the forwardmost end of one segment member of the pair of members of the holding portion (10) to the forwardmost end of the other segment member of the pair of segment members of the holding portion (See Figures 1, 3 & 5).

Regarding claim 43, Pursley et al., discloses the cross member (See Figure 1) of the holding portion (See Figure 1) is flat (See Figure 1); wherein the cross member of the holding portion is elongated (See Figure 1) and urge the head of the hammer against the rear portion of each segment member of the pair of segment members of the holding portion so as to replaceably maintain the head of the hammer in the cradle of the holding portion (See Figure 1).

However, Pursley et al., does not disclose the head of the hammer having the cheek; and the cross member of the holding portion is to abut against the cheek of the head of the hammer.

Boydon teaches the head of the hammer having the cheek (See Figure 3); and the cross member (See Figure 1) of the holding portion (14) is to abut against the cheek

of the head of the hammer (10) (See Figure 1) for the purpose of providing additional support.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the head of the hammer having the cheek; and the cross member of the holding portion is to abut against the cheek of the head of the hammer as taught by Boydon with the holder of Pursley et al., in order to enhance support and reinforcement.

Regarding claim 44, Pursley et al., (6557739) further discloses the holding member comprises the catch (4a) (See Figure 1); wherein the catch (4a) of the holding member is generally U-shaped (See Figure 1); wherein the catch (4a) of the holding member extends forwardly from the upper portion of each extension member of the pair of extension members of the attaching portion (See Figure 1); wherein the catch (4a) of the holding member extends just below the upper loop (See Figure 1) of each extension member of the pair of extension members of the attaching portion (See Figure 1); and wherein the catch (4a) of the holding member is for replaceably capturing the handle of the hammer therein (See Column 3, lines 6 – 9) for the purpose of providing adequate anchoring.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the holding member comprises the catch; wherein the catch of the holding member is generally U-shaped; wherein the catch of the holding member extends forwardly from the upper portion of each extension member of the pair

of extension members of the attaching portion; wherein the catch of the holding member extends just below the upper loop of each extension member of the pair of extension members of the attaching portion; and wherein the catch of the holding member is for replaceably capturing the handle of the hammer therein as taught by Pursley et al., with the holster of Pursley et al., in order to enhance reliable and durable anchoring.

### ***Allowable Subject Matter***

7. Claims 14, 17, 19, 22 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***


Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the

requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lester L. Vanterpool whose telephone number is 571-272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**JES F. PASCUA**  
**PRIMARY EXAMINER**

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A handwritten signature in black ink, appearing to be 'LLV' with a stylized flourish.

LLV

June 14, 2006